

November 13, 2001

PUBLIC UTILITIES COMMISSION  
Investigation Into the Provision of Hub  
Pri Service by Verizon in the Service  
Areas of Verizon and Independent  
Telephone Companies

ORDER ADDRESSING RATE  
STRUCTURE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

In this Order we address price structure issues in this investigation involving compensation that Verizon should pay to independent telephone companies (ITCs) for the origination, in ITC service areas, of traffic that is destined for Verizon's Hub-PRI service. We decide that compensation shall not have per-minute charges such as those for interexchange toll or "traditional" access and should instead be "flat-rated," but nevertheless related to the amount of capacity that an ITC must provide in order to accommodate the additional traffic that will be caused by virtue of Verizon's service.

**II. PROCEDURAL BACKGROUND**

We issued a Notice of Investigation (NOI) in this case on September 26, 2001.<sup>1</sup> One of the major subject areas of the investigation is the issue of compensation from Verizon to independent telephone companies for Hub-PRI traffic that originates in ITC service areas and that the ITCs carry to a "meet point" with Verizon. Pursuant to agreement among the parties and Hearing Examiner, the parties filed Direct and Reply Cases on September 28 and October 12 respectively. Those Cases were essentially briefs or position statements, but the parties were allowed to include factual representations.<sup>2</sup> Based on our review of these filings and representations by the Commission's advisors that the rate structure issue was impeding any progress toward a settlement (or even a discussion of costs or an appropriate rate level), we decided to address the rate structure issue separately. We held a hearing (consisting of argument by the parties and questions from the Commission) on November 2, 2001, at which we addressed these issues in detail.

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<sup>1</sup> Prior to the NOI in this case, we considered many of the issues that we address in this proceeding in Maine Public Utilities Commission Investigation Into Use of Central Office Codes (NXXS) By New England Fiber Communications, LLC D/B/A Brooks Fiber, Docket No. 98-758 (Brooks Investigation).

<sup>2</sup> As discussed in the NOI, it may be necessary to hold evidentiary hearings to address some factual issues.

### III. SUBSTANTIVE BACKGROUND

In the Brooks Investigation, we ordered Verizon to offer a state-wide, flat-rated, discounted service to internet service providers (ISPs) that would serve as a substitute for a service offered by Brooks that we previously found to be unreasonable and unlawful. We required that the service be available on a single-number basis, i.e., it should use no more than one NXX code.<sup>3</sup> We ruled that the service was an interexchange service, and we ordered Verizon to provide the service both in its own local exchange service areas and in the service areas of the ITCs because all except two of the ITCs do not provide interexchange services in their own service areas, and because Verizon did provide such service in those areas.<sup>4</sup> The ITCs would provide “access” to Verizon, i.e., the wholesale services necessary for the switching and transport to the meet point of the Hub-PRI traffic that originates in their service areas.

We also required Verizon to price the service at a substantial discount from retail toll or wholesale access services, based on the requirement of 35-A M.R.S.A. § 7104 that there be “affordable” access to the internet and other computer-based information services. In the order in which we first proposed such a service (June 22, 1999 in Docket No. 98-758), we specifically stated that the retail rate should be based on long-run incremental cost and should “not include a contribution to the cost of commonly-used non-traffic-sensitive loop facilities.”<sup>5</sup>

Finally, we required that the service be flat-rated (non-usage-sensitive) to ISPs and toll-free to ultimate end-users, i.e., to the ISPs’ subscribers. The flat rating of the service to ISPs reflects the fact that ISPs generally charge their customers on a flat-rated basis and that customers expect that kind of pricing both for internet service itself and for telephone network access to ISPs.<sup>6</sup>

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<sup>3</sup> In fact, because the service uses a code (699) within the 500 NNX code, it uses no NXX code within the 207 area code.

<sup>4</sup> Verizon is, of course, not the only interexchange service provider in the ITCs’ service areas, but is the “designated carrier” of the 20 companies that do not provide their own toll service.

<sup>5</sup> Verizon claimed that its price was highly discounted compared to access and toll rates and that they met the “affordability” standard of 35-A M.R.S.A. § 7101(4). It did not state whether the price was based on long-run incremental costs or if it excluded “contribution.” However, no party in the Brooks investigation (including the ITCs) claimed that the rates were unreasonable in any way. The level of the rates is such that, based on any reasonable expectation of traffic volumes, there is no reason to conclude that they would include a “contribution” component.

<sup>6</sup> Persons connecting to the internet often connect for long periods of time. The Commission often receives inquiries and complaints about calling areas, and, over the past few years, many of these complaints have been about the desire of customers, because of their long holding times, to reach ISPs without incurring toll charges.

#### IV. DISCUSSION AND DECISION

We decide that it is inappropriate for Verizon to pay the ITCs per-minute charges for the origination of Hub-PRI traffic that is destined for termination at ISPs in Verizon's service area. If Verizon must pay per-minute charges for a component of the service it must offer on a flat-rate basis, particularly where that service is substantially discounted, it runs the risk that its costs might exceed its revenues.

It has been clear for some time that internet services increasingly are priced on a flat-fee basis for unlimited usage. We required Verizon to charge ISPs for the Hub-PRI service on a flat-rated basis in recognition of the fact that the ISPs are effectively required by market demand to charge their customers on that basis. If Verizon charged usage-based rates to the ISPs, the ISPs would run the risk that they might pay more to Verizon than they could collect from customers. The logic of requiring the retail rate for the Hub-PRI service to have the same structure as the ultimate retail rate structure for the purchasers of the service applies with equal force to the next step back: if we require Verizon to sell its service for a flat rate, it follows that it should not have to pay for services (ITC access) on a usage basis.

The ITCs' argument may be summarized as follows: the Commission has found that the Hub-PR is interexchange; therefore, the service the ITCs provide is access, and access is priced on a per-minute basis. The ITCs admit that the Commission indicated, in Order No. 4 in the Brooks Investigation (Docket No. 98-758; June 30, 2000), that the rate to ISPs should be flat-rated, but they argue there is "no indication" in that Order that "inter-carrier compensation should be anything other than a *normal* interexchange access structure." (emphasis added) <sup>7</sup> Finally, at the hearing on November 2, the ITCs claimed that the FCC recently ruled that pricing for internet traffic between ILECs and CLECs should be on a usage basis.

What all of the ITCs' arguments avoid is any discussion of the logic of the question of why the price structure for a cost that underlies the service should not be the same as the price structure for the service itself. In arguing for a "normal interexchange access structure," the ITCs ignore the fact the Verizon Hub-PRI service is anything but "normal." It is unique in that it is a flat-rated service that carries interexchange (and local) traffic and that its rates are very low compared to other rates for interexchange service. For these reasons, we reject the ITCs' arguments that there should be per-minute charges for the services provided by the ITCs to Verizon for the origination of Hub-PRI traffic.

The rate structure we will require will be sensitive to traffic volumes, however. Verizon must pay the ITCs for the cost of the capacity that the ITCs must provide to

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<sup>7</sup> They also attempt to place great weight on certain factors the Commission identified in Order No. 4 as having possible relevance to any attempt by the parties to settle the compensation issue, even though it should be apparent that not all of those factors deserve equal weight.

carry the Hub-PRI traffic that originates in ITC service area. The amount of capacity the ITCs must provide is directly related to traffic volumes.<sup>8</sup> The equipment that the ITCs must use to process the traffic is presumably identifiable. We therefore will require a periodic flat charge for discrete units of capacity for each of the facilities that are necessary for processing the Hub-PRI traffic. The future filings that the parties will make shall identify what equipment is necessary to provide originating service and the units of capacity (e.g., each T-1) that will be subject to the periodic flat charge.

We draw no distinction between capacity that now exists and that which an ITC may need to build to accommodate additional Hub-PRI traffic volumes. We see no reason why Verizon should pay only for additional capacity that must be installed. If an ITC has sufficient existing capacity, it is nevertheless entitled to payment for the use of that capacity. Moreover, it might need to build additional capacity in the future sooner than it otherwise would because of the additional Hub-PRI traffic. We also see no need to distinguish between interexchange and local traffic. Although some portion of the Hub-PRI traffic will terminate in exchanges that are within the basic service calling area (BSCA) of the exchange in which a call originated, Verizon's Hub-PRI service charges the same amount for each PRI regardless of whether the traffic is interexchange or local (or mixed), and the costs for both Verizon and the ITCs to process the traffic do not differ for interexchange and local traffic.

The rate should be based on the ITC's (or ITCs' collectively) revenue requirement for the equipment used in providing the originating services. Typically, a revenue requirement would consist of the amount of investment<sup>9</sup>, return and income taxes on that return, depreciation expense and maintenance expense and property taxes, if any. We have not recently found a rate of return for any ITC. A return that incorporates a return on equity that is consistent with recent findings by this Commission or the FCC will be sufficient.

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<sup>8</sup> Verizon and the ITCs recently provided the Commission Staff with a table that indicates the number of T-1s that each ITC must provide in order to carry the originating Hub-PRI traffic that will occur in the locations identified. The table does not distinguish between existing and unbuilt facilities. We understand that Verizon and the ITCs developed these numbers jointly. While they are not directly relevant to the *rate* that Verizon should pay for *each* T-1, they are certainly an indication of present estimates of capacity needs. The companies have not provided any information about whether they will use these estimates as final figures, whether they anticipate some true-up process, and whether they will (or even can) measure the amount of actual Hub-PRI traffic (as opposed to other traffic) that originates in each ITC area. In their next filings, we request the parties to indicate whether the Commission must become involved in determining the amount of capacity needed by each ITC.

<sup>9</sup> The amount of investment may differ depending on whether a party proposes to use embedded costs or some measure of forward-looking costs. In addition, over time, because of accumulated depreciation, the book value of a facility decreases. In developing a rate, the parties should take this fact into account.

## V. FURTHER PROCEEDINGS

On or before December 4, 2001, each party shall make a further filing that proposes a rate or rates<sup>10</sup> that comply with the rate structure description above. Following review of those filings, the advisors and the parties will confer to determine whether reply filings and/or evidentiary hearings are necessary.

Accordingly, we

### O R D E R

That the parties shall develop and propose a rate or rates that Verizon will pay to independent telephone companies for the services provided by those companies in connection with processing and transporting Verizon Hub-PRI traffic that originates in those companies' service areas. The proposed rates shall comply with the rate structure directives of this Order. The parties shall file their proposed rates and supporting materials on or before December 4, 2001.

Dated at Augusta, Maine, this 13<sup>th</sup> day of November, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

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<sup>10</sup> If a party believes that there should be separate rates for separate functions, such as transport and switching, it may propose a set of rates.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.